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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

JUN 15 2020

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

20-cv-929 MJP

United States District Court Western District of Washington (Seattle)	
Name (Under which you were convicted): John Emmett Brown	Docket or Case No. 2:15-cr-00211-MPJ
Place of Confinement: F.C.I. Mendota	Prisoner No. 45615086
UNITED STATES OF AMERICA	
Movant (Include name under which convicted) v. John Emmett Brown and	

Motion

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court Western District of Seattle
(b) Criminal docket or case number (if you know): 2:15-cr-00211-MPJ
2. (a) Date of the judgment of conviction (if you know): Dec. 5, 2016
(b) Date of sentencing: Dec. 5, 2016
3. Length of sentence: 120-months
4. Nature of crime (all counts) Count 1 - Conspiracy to
Distribute Cocaine, 21:846/21:841(a)(1), 841(b)(1)(A) & 18:2
Count 2 - Possession of Cocaine w/Intent to Distribute/21:841(a)
(1), 841(b)(1)(A) & 18:2
5. (a) What was your plea? (check one)
(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
N/A
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals - Ninth Circuit
- (b) Docket of case number (if you know): Nos. 16-30297 & 1630298 [Consolidated]
- (c) Result: Affirmed
- (d) Date of result (if you know): Feb. 22, 2019
- (e) Citation to the case (if you know): U.S.A. v. John Emmett Brown and Derrick Carter
- (f) Grounds raised: A. The government violated Brady v. Maryland and its progeny by suppressing favorable evidence material to Appellant's duress defense / B. The government presented and failed to correct false testimony / C. The Court should vacate Appellants' convictions and remand for a new trial due to the government's pervasive improper closing arguments.
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
If "yes," answer the following
- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation of the case (if you know): _____
- (5) Grounds raised: _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
Yes ☒ No ☐
11. If your answer to question 10 was "yes," give the following information:
- (a) (1) Name of court: United States District Court, West. Dist. of Seattle
- (2) Docket or case number (if you know): CR15-211 MJP
- (3) Date of filing (if you know): 8/29/2016
- (4) Nature of the proceeding: Motion Requesting a New Trial
- (5) Grounds raised: (1) The prosecution flagrantly disregarded the Court's pretrial order regarding juvenile witnesses; (2) The prosecution willfully violated this Court's pretrial order regarding government lay witnesses; (3) The prosecution elicited inadmissible and highly prejudicial testimony from Corporal Kajan;

(4) The government made promises of assistance to entice a defense witness to stop cooperating with the defense.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☒ No ☐

(7) Result: Denied

(8) Date of result (if you know): Dec. 5, 2016

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective assistance (Failure to investigate)
(Failure to present witnesses)

- (a) Supporting facts do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to conduct an investigation
into exculpatory evidence (FDC Coleman calls)
which were in the disclosed discovery presented to
the defense prior to trial. Counsel failed to call
government witness Kristina Johnson and
defense witness Officer Farlin

- (b) Direct Appeal of Ground One:

- (1) If you appeal from judgment of conviction, did you raise this issue?

Yes ☐No ☐

- (2) if you did not raise this issue in your direct appeal, explain why: _____

- (c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

- (2) If your answer to question (c)(1) is "yes," State

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion of order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes []

No []

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes []

No []

(6) If your answer to (c) (4) is "yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: _____

GROUND TWO:

Violation of the 6th Amendment right to
conflict free counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

When counsel litigated Browns new trial
motion. He excluded all argument and
reference relating to his deficient
performance and failures when separate
counsel should have been appointed at
that point.

(b) Direct Appeal of Ground Two:

(1) If you appeal from judgment of conviction, did you raise this issue?

Yes [] No []

(2) if you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to question (c)(1) is "yes," State

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion of order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to (c)(4) is "yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: _____

GROUND THREE Cumulative Errors

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim:

Government's continued denial throughout
Petitioner Trial about the existence of FDC
Colemans calls that were found to be in their
possession as far back as July 2011 as well
as Browns counsel failure to thoroughly review
the discovery and present the evidence
at trial. These acts along with several
others created substantial errors that
effected the outcome of petitioners
trial.

(b) Direct Appeal of Ground Three:

(1) If you appeal from judgment of conviction, did you raise this issue?

Yes []

No ☒

(2) if you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes []

No ☒

(2) If your answer to question (c)(1) is "yes," State

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion of order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes [] No []

(4) Did you appeal from the denial of your motion, petition, or application?

Yes [] No []

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes [] No []

(6) If your answer to (c)(4) is "yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Prosecutorial misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

The government continued a False narrative to the jury in order to Discredit the petitioners defense of Duress at trial (ie) The calls of curtis coleman's threats didn't exist.

The coleman calls Had been disclosed by the government Prior to trial.

(b) Direct Appeal of Ground Four:

(1) If you appeal from judgment of conviction, did you raise this issue?

Yes [] No []

(2) if you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes [] No []

(2) If your answer to question (c) (1) is "yes," State

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion of order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes [] No []

(4) Did you appeal from the denial of your motion, petition, or application?

Yes [] No []

(5) If your answer to question (c)(4) is "yes," did you raise this issue in the appeal?

Yes [] No []

(6) If your answer to (c)(4) is "yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to question (c)(4) or question (c)(5) is "no," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motions, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes [] No []

If "yes," state the name and location of the court, the docket number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Stephan R. Illa, P.O. Box 10033, BainBridge Island, WA 98110

(b) At arraignment and plea:

Stephan R. Illa [same address as above]

(c) At trial: Robert Flennaugh, II, 810 Third Avenue, Ste 500, Seattle, WA 98104.

(d) At sentencing:

Robert Flennaugh [same address as above]

(e) On appeal: Myra Sun, P.O. Box 65786, Los Angeles, California [90065]

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Writ of Certiorari - Myra Sun [same address as above]

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes [X] No []

17. Do you have any future sentence to serve after you complete the sentence for the judgment the you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of the court that imposed the other sentence you will serve in the future: N/A
- (b) Give the date that the other sentence was imposed: _____
- (c) Give the length of the other sentence: _____
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐
18. TIMELINESS OF MOTION: If your judgment if conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) The date on which the judgment of conviction became final;
- (2) The date on which the impediment to making a motion created by governmental action in violation of the Constitution of laws of the United States is removed, if the Movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: prays the court will vacate the sentence and any other relief the court may deem appropriate under its equitable authority

or any other relief to which Movant may be entitled

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the forgoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on

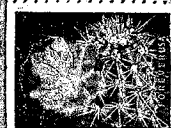
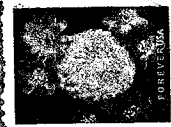
6/10/2020 (month date, and year).

Executed (signed) on June 10 2020 (date).

[Signature]
Movant

If the person signing is not Movant, state relationship to Movant and explain why Movant is not signing this motion. _____

John E. Brower #45015-086
Federal Correctional Institution
P.O. Box 9
Mendota CA 93640



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U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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United States District Court
700 Stewart St Suite 1420
Seattle WA 98101-9906

FEDERAL CORRECTIONAL INSTITUTION, MENDOTA

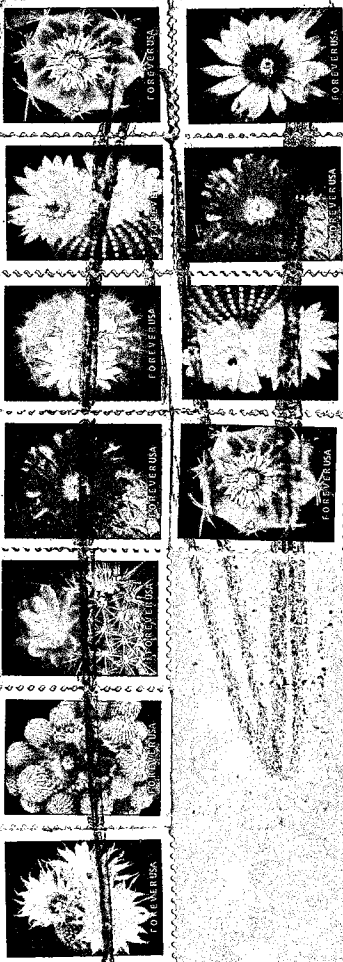
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DATE: 6-17-20

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John E. Brown # 45015-086
Federal Correctional Institution
P.O. Box 9
Mendota CA 93640



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The United States District Court
700 Stewart St. Suite 1427
Seattle WA 98101-9906

MENDOTA, CA 93640
DATE: 6-7-0
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